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ABSTRACT

This paper traces the status of collective bargaining in education from its origins to the present. Following a brief history of collective bargaining efforts, a comparison of the traditional and the collective-bargaining approaches to school personnel administration is presented. An extensive analysis of State collective-bargaining statutes and a discussion of grievance procedures highlight the document, which concludes that collective bargaining can be expected to remain a permanent fixture in school personnel administration. A bibliography of recent sources is appended. (LLR)

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STATUS AND SCOPE OF COLLECTIVE BARGAINING IN PUBLIC EDUCATION

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on Educational Administration

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M. Chester Nolte

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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Foreword

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The author of this paper, M. Chester Nolte, is professor of educational administration at the University of Denver. Dr. Nolte served for nine years as superintendent of school districts in Ohio and Colorado, and has been at the University of Denver since 1959. He is author of numerous publications on school law and collective bargaining and has served as a consultant on collective bargaining to the Denver Public Schools, the National Education Association, and state education associations in Oklahoma and Colorado.

Philip K. Piele
Director

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Preface

What is ahead in the 1970s for the personnel administrator in the public schools? Will his job of hiring and firing, improving and supervising, assigning and transferring personnel be greatly influenced by that heritage from the 1960s, collective bargaining for teachers? What is the present extent of collective-bargaining legislation in this country? What trends are evident? These questions lie at the heart of this paper. What you will find in this report, therefore, is essentially a description of the status of collective bargaining in education as it existed in the fifty states at the close of the 1960s.

At one time, conclusion-oriented inquiry dominated the field of educational research. Now, however, it is being rapidly replaced by another type of inquiry, decision-oriented research. The pressures facing school administrators today call for the latter type of supportive inquiry, which will help them to make "right" rather than "wrong" decisions. Research findings are generally put to greater use if the decision maker understands that the intent of the research is to help him to make wise decisions in his daily work. Relevancy, brevity, reality, and the ability to project future trends are the fruits of decision-oriented inquiry.

Hopefully, this report will be of this variety, useful not only to

school personnel administrators, for whom it was principally intended, but also to other decision makers in education--members of boards of education, legislators, teachers groups, and students of personnel administration.

Although the report "tells it like it is," it is only a fleeting glance at a rapidly changing condition. Therefore, it should be read with the knowledge that the status of collective bargaining for teachers is changing quickly and that its conclusions are only tentative. The research was completed in January 1970.

The end of the first full decade of collective bargaining for school teachers is fast approaching, a decade that already has seen the number of teachers who bargain with their boards rise from zero to more than half of the nation's teachers. Before it comes to an end, possibly 95 percent of all teachers in this country will be covered by written agreements. Surely no more dynamic decade for public school personnel administration can be imagined.

The framework of bargaining in public education is familiar--the same as occurs in the private sector, but with variations to suit the needs of public employment. That the shoe does not fit is obvious, but the search for the right size goes on. Twenty-two states have statutes governing the new procedure; twenty-eight do not. Thus, much bargaining between teachers organizations and representatives of boards of education is still largely experimental.

If this report helps educational decision makers to understand their new roles in collective bargaining, it will have served its purpose well.

1

Background

It would be difficult to imagine a more important new development in American labor relations than the spectacular growth during the 1960s of collective bargaining for government employees. In contrast with workers in the private sector of the economy, who bargained under numerous public laws after 1935, publicly employed workers showed little inclination to organize and seek employment rights prior to 1961. In that year, now pointed to as the beginning of an era, the United Federation of Teachers won exclusive bargaining representation rights in New York City. In the nine years since, more than half of the instructional staff in the nation's public schools have become involved in collective bargaining with their boards of education. The movement is rapidly gaining momentum as the nation enters the 1970s.

The importance of the New York City bargaining election for the labor movement in general and for bargaining by teachers in particular cannot be overemphasized. Coming as it did at a time when the number of blue collar workers was declining, and the number of white collar workers increasing, the election awoke the unions to the realization that, to survive, they could and must organize white collar workers. While many other factors also were propitious for the white collar

movement, one of the most important drives at the outset was the dedication of union leaders to winning over the teaching corps in large cities. That teachers in most of the nation's largest cities are today represented by units affiliated with the labor movement testifies to the success with which this objective was achieved.

But the unions would not have succeeded unless other factors in the social setting had also been favorable to change in the same direction. In 1877, Victor Hugo wrote, "Greater than the tread of mighty armies is an idea whose time has come." Such an idea seemed to underlie the quest by government employees in the 1960s to enter into meaningful dialogue with management on common problems. The remainder of this chapter consists of, first, a brief history of the development of collective bargaining in the public and the private sectors, and, second, a discussion of some of the factors that have contributed to the speed and direction public employees have taken in seeking employment rights.

Historical Bias against Worker Organizations

During the Middle Ages, more than fifty different guilds were established to set standards for the work of the various crafts and to provide for the mutual assistance of the members and their families. With the coming of the Industrial Revolution in England, whose far-flung colonial empire provided both the raw materials for manufacturing and the market for finished goods, the guilds were no longer able to meet the demands of expanding markets at home and abroad. The power once held by the guilds fell into the hands of a new class of "capitalists," who provided financing for the early factory owners. To encourage the growth of trade and to build the empire, the British passed numerous laws that accelerated the spread of industrialization. Almost without exception, these laws favored the property and management rights of the bankers and proprietors rather than the rights of the workers (Durant 1967).

Shorn of the protection of the guilds, workers found themselves being exploited with little protection from the law. Many eighteenth-century economists recommended low wages as a stimulus to steady work on the grounds that when workers were paid well, they could afford to be absent from their work. Women and children were required to work from ten to fourteen hours a day six days a week, and factory owners were allowed to discipline them severely for laziness or poor work.

Eventually, the workers tried to better their lot by riots, by strikes and organization, and by smashing the machines they believed were the cause of their trouble. In 1769, Parliament made the destruction of machinery a capital crime.

Other laws prohibited the formation of labor unions and collective bargaining. Adam Smith (1723-1790) recommended in his writings that "combinations" of workers be outlawed. In 1799, Parliament declared illegal any associations aimed at securing higher wages, altering the hours of work, or decreasing the quantity of work required of the workers. Employees who entered into such combinations were punishable by imprisonment, and informers against such men were to be indemnified. The employers and capitalists were in the driver's seat.

This bias in favor of property rights and against worker organizations was transplanted into the English colonies in America, and was incorporated into the early laws governing workers. In 1806, in the famous Philadelphia Cord-Wainers' case, the U.S. Supreme Court held that the defendants, who had attempted to raise their wages, were guilty of criminal conspiracy. Punishments meted out to violators of these laws were criminal penalties, including jail sentences. For the next thirty-six years the attitude of the courts was that worker organizations were a criminal conspiracy and in violation of the law of supply and demand.

The case of Commonwealth v. Hunt in 1842 (4 Metcalf 111) is generally considered the end of the doctrine of criminal conspiracy. The mere act of combination did not make a labor organization an unlawful body, said the Court. Whether a combination of workers was criminal depended on the nature and purpose of the concerted activity.

In 1890, Congress enacted the Sherman Anti-Trust Act, under the provisions of which labor unions were sometimes found guilty of conspiracy to restrain trade. Violators were subject to fines and imprisonment, restraining orders and injunctions, and/or civil suits for triple damages. In 1914, the Clayton Act supposedly removed unions from the restrictions of the anti-trust act, but in practice the Supreme Court continued to apply the Sherman Act to unions until the early 1940s. The less than impartial treatment unions received from the courts continued for several decades after the passage of the Clayton Act.

Since 1880, the courts had been issuing injunctions against the strike actions of unions; hence, true collective bargaining unhampered by the law did not come into prominence until well into the twentieth century. In 1935, the Wagner Act prohibited employers from interfering with the rights of workers to join labor unions and to bargain with management. Union membership rose from 3.9 million in 1933 to an estimated present membership in excess of 18 million (Evans and Maas 1969).

The Wagner Act specifically excluded public workers from its coverage, as did subsequent labor legislation. Not until the 1960s did public employees mount a realistic campaign to gain recognition

of their rights to bargain. In this respect, the 1960s were to the public sector of the employment force what the 1930s had been to the private sector.

Collective Bargaining in Public Employment

Although collective bargaining was widely accepted by the nation as permissible in the private sector, early attempts to encourage its adoption in governmental employment met resistance from influential persons. In 1937, for example, President Franklin D. Roosevelt said:

> The process of collective bargaining. . .cannot be transplanted into the public service. It has its distinct and unsurmountable limitations when applied to public personnel administration. . . .I want to emphasize that militant tactics have no place in the functions of any organization of Government employees. (Lieberman and Moskow 1966, p. 4)

One of the "militant tactics" that President Roosevelt objected to was the strike, which he considered an insurrection against the very government the employees had sworn to uphold. Nevertheless, as early as 1912, Congress recognized the right of federal employees to organize for the purpose of improving their working conditions. No specific provisions were made for official recognition of these organizations, but the heads of many federal agencies voluntarily developed relationships with these organizations. Few of the basic rights guaranteed in the Wagner Act were observed in these relationships, however.

In 1917, the question whether public school teachers could be dismissed for membership in a labor union arose. The Chicago Board of Education adopted a resolution prohibiting membership by any of its teachers in the Chicago Federation of Teachers. Several teachers who violated this resolution were dismissed from their jobs. The Supreme Court of Illinois upheld the board's resolution, declaring that union membership "is inimical to proper discipline, prejudicial to the efficiency of the teaching force, and detrimental to the welfare of the public school system" (People ex rel. Fursman v. City of Chicago, 116 N. E. 158, 1917). A similar case arose in Seattle in 1930, with the same result (Seattle High School Chapter No. 200 of the A. F. T. v. Sharples, 293, Pac. 994, 1930).

The regulation against union membership by teachers was not reversed until 1951. In that year, several teachers in the Norwalk, Connecticut, schools were dismissed for striking (Norwalk Teachers' Association v. Board of Education, 83A. 2d 482, 1951). Although the state court upheld their dismissal, it also ruled that, in the absence of enabling legislation, (1) public school teachers may organize; (2) a

school board is permitted, but is not legally obligated, to negotiate with a teachers organization; (3) a school board may agree to arbitrate with teachers, but only on those issues that do not erode the board's legal prerogative to have the last word; (4) a school board may not agree to a closed shop; and (5) public school teachers may not strike to enforce their demands. During the next two decades, these five conclusions from the Norwalk case became important precedents in those states that lacked legislation on collective bargaining for teachers.

Factors Contributing to Collective-Bargaining Movement in Education

Ten years after the Norwalk case, teachers launched a fast-moving campaign to organize and to seek the right to bargain collectively with boards of education. A number of conditions, directly and indirectly related to education, affected the growth of this movement.

Teacher militancy

The strategic position of teachers in the nation's economy, coupled with sweeping changes in the makeup of the teaching corps, contributed greatly to the rise in teacher militancy during the sixties. Since the relationship of teacher militancy to collective bargaining has been amply covered by Williams (1970) in an earlier state-of-the-knowledge paper prepared for the ERIC Clearinghouse on Educational Administration, no effort will be made here to discuss this factor in detail.

Lower compensation in public service

Salaries and other benefits available to workers in the public sector have traditionally been less attractive than those in the private sector. In 1883, because of pressures placed upon the spoils system, Congress enacted the Pendleton Act, providing for competitive examinations under the newly established Civil Service Commission. As the civil service concept spread to the states and their local subdivisions, security of employment became more important than compensation. The gradual extension of civil service to all levels of government, plus the inception of tenure laws to protect teachers against arbitrary dismissal, tended to appease public employees so that they would settle for less in economic gains than workers in the private sector of the economy.

Not until government workers realized that they were subsidizing the government through inadequate pay and that they lacked organization

and bargaining power did they begin to campaign for the same rights as workers in the private sector. Thus by 1962 the unions found ready ears among the rank and file of disgruntled government employees, and union membership began to grow apace.

Increasing numbers of public employees

A major factor contributing to increased interest in collective bargaining for public employees is undoubtedly the growing size of the work force in governmental service. In 1956, the number of public employees was approximately 7 million, while in 1969 the number was estimated to be nearly 12 million. By 1975, the number will reach 15 million. One out of every six employees in this country is today on a public payroll.

Three out of every four public employees are on state or local payrolls. Proportionately, the number of employees in state or local public service is increasing at a much faster rate than in the federal service. For every one federal worker added in the decade 1955-65, fifteen state or local workers were added. Most of the additional 3 million public workers who will be on the payrolls by 1975 will be employed by state or local governments.

Educators comprise a substantial proportion of all government workers. One of every two state or local employees in public service is engaged in education. The number of public school employees in the 1970s is expected to exceed 2.4 million. Should these workers unite and speak with one voice, the resulting organization would be larger than the Teamsters Union, the American Medical Association, or the United Automobile Workers. It could well be the most influential organization in the nation.

During the 1968-69 school year, 933,295 instructional personnel--58.7 percent of the national total--were engaged in collective bargaining. The National Education Association represented 745,262, or 79.9 percent; the American Federation of Teachers represented 181,388, or 19.4 percent; and independent organizations represented 6,645, or 0.7 percent (NEA 1969).

Size of the educational enterprise

The size and visibility of the educational establishment likewise have contributed to increased pressures to negotiate in governmental service. Education is one of the largest, if not the single largest, businesses in most communities today, accounting for some 64.7 billion dollars in expenditures annually, a figure that is expected to double by the end of the 1970s. Many of the incremental costs will be in the form of additional economic benefits for teachers.

Presently, more than 61 million Americans are engaged full time as students, teachers, or administrators in the nation's educational enterprise ("Magnitude of the Educational Enterprise" October 18, 1969). Schools are of vital concern to some 100 million taxpayers.

So important for national survival and for the American way of life has education become that Congress has appropriated billions of dollars annually in fulfilling such public laws as the National Defense Education Act and the Elementary and Secondary Education Act. The crucial link between education and our national goals has placed teachers in a position more favorable to the adoption of collective bargaining than was possible in earlier, less dynamic times.

Education is one of the most visible American activities. Throughout the country, in some 20,000 local administrative units, local citizens congregate to discuss the business and the funding of the schools. Although the citizen feels he can do little to influence the spending of his tax dollars going to Washington, he is more confident that he can shape the budget at the local level. Where the size of the district makes such personal contacts with the governing board impractical or impossible, many persons and groups have agitated for a return "to the grass roots." Experiments to decentralize large school districts have thus been attempted, and no doubt will continue into the 1970s.

As more citizens have become involved in school affairs, the traditional attitude that teachers should not be allowed to organize or strike has softened. In 1967, 77 percent of the persons queried in a Louis Harris Opinion Poll believed in the right to strike in private employment, but only 48 percent believed in this right for government workers. Among teachers themselves, the percentage favoring strikes when all else fails has been steadily increasing.

Presidential Order No. 10988

Another stimulant to collective bargaining rights for public employees came through the publicity given President Kennedy's January 1962 Executive Order No. 10988, which formalized relationships between the federal government and its employees. A collective-bargaining agreement between the Tennessee Valley Authority and its employees preceded the order by several years, and perhaps had a greater effect on collective bargaining for public employees than the 1962 order (Massey 1969, p. 205). Nevertheless, the publicity given the Kennedy order, and the knowledge that cooperation between the government and its employees amounted to public policy, tended to act as a stimulus to workers at all levels of government in the late 1960s.

Statutory enactments

Even before the UFT won bargaining rights in New York City, the movement to permit or require bargaining for public employees through state legislation had already begun. In 1959, the Wisconsin legislature enacted such a statute, and in 1961 revised it in line with the two years' experience. In 1962, Alaska enacted permissive legislation similar to Wisconsin's. By the end of 1965, nine states had legislation either permitting or mandating collective bargaining for public employees; by October 1969, the number of states having such legislation had increased to thirty. Of these, twenty-two had statutes applying specifically to teachers.

Although statutes contributed to bargaining between teachers and boards of education, bargaining does not depend on the enabling power of legislation for sustenance. For example, in 1969 in Colorado, which has no enabling legislation, 82.4 percent of all certificated personnel in the state's public schools were employed by districts that had written agreements. The same observation could be made for other states.

The types of legislative enactments vary widely from state to state. More will be said on this subject in a later chapter. Suffice it to say here that, whereas in some states legislation tended to stimulate public employee bargaining, by no means did the absence of such legislation preclude bargaining. In several states, bargaining was influenced by the opinions of attorneys-general. However, since these officials were not in agreement, the legality of such activities cannot be clearly delineated in the absence of enabling legislation.

Labor-management experience

The ready availability of a workable system of bargaining in the private sector further contributed to the interest in bargaining by public employees. Younger teachers, familiar with the language and underlying philosophy of the labor-management framework, were not as skeptical as their seniors about adopting and adapting it to their needs.

Some pertinent questions were raised by government workers in the latter half of the sixties. Why should public employees be required to subsidize the government? Should they be penalized simply because they choose to work for government? Should they not have the same rights to bargain as workers in the private sector have enjoyed since 1935? If this last question was to be answered affirmatively, by what means should these rights be realized? These questions and similar ones were posed with the labor-management framework as a backdrop. The presence of a process that has proved viable over more than thirty-five years of use in the private sector did much to raise the hopes of public employees near the close of the 1960s.

Bargaining a constitutional right

Historically, the public attitude toward organizations of workers in this country has been cool if not indeed hostile. At one time, workers who organized and approached management on conditions of work were subject to arrest for criminal conspiracy. Later, as bargaining became more acceptable, such an approach would still have been subject to injunctive relief in a court of law. Within the larger movement sometimes referred to as the Revolution of Rising Expectations, the concept that workers had First Amendment rights was taking shape in the public mind.

"Congress. . . shall make no law respecting. . . or abridging. . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Although the founding fathers had no such circumstances in mind, the right of workers to peaceably assemble and approach their government employers conceivably does fall within the protection of the First Amendment. At least, this right was constitutionally assured by late 1969, and the point beyond that to which public employees might go was being debated.

Waning power of local boards

Public school teachers doubtless were partly encouraged to confront boards of education because of the declining power of the boards to deal realistically with problems in rapidly changing urban centers throughout the land.

Once among the most powerful government bodies anywhere, having legislative, executive, and judicial powers on delegation from the legislature, plus the power to do whatever the occasion implied or necessitated, the boards of today appear to have mountainous responsibilities without commensurate authority (or capability) to deal meaningfully with the situation ("Race, Money, Militancy: New Issues Confronting School Boards" Fall 1969). Some of these problems transcend local capabilities, being in the nature of such national issues as surviving as a nation, developing necessary manpower, guaranteeing constitutional rights of all citizens, and adequate funding of the educational enterprise, to name a few. Issues of the magnitude of the separation of church and state, the use of public funds for private and parochial education, and the desegregation of the public schools involve much more than the local board can legally deal with. The condition of the core cities is particularly distressing to teachers, yet in some instances boards of education seem powerless to solve the cities' problems. When local boards began to falter, therefore, teachers groups seized the opportunity to ask for full partnership with them in the educational decision-making process.

The preceding is by no means a complete list of factors contributing to the rise of collective bargaining for teachers and other government

employees. No doubt the rivalry between the AFT and the NEA, the civil rights movement, student unrest, and many other related factors did much to accelerate the adoption of collective bargaining. The point is that a large number of factors seemed to converge and focus on the schools in the waning years of the 1960s, all contributing to a reassessment of employee-management relationships in public education.

Williams summarizes the pressures confronting education with this observation:

> The educational process takes place in an increasingly shifting and volatile environment. Society's institutions are besieged by groups using violent and nonviolent disobedience to successfully achieve their goals. With the consensus on national values and norms appearing to evaporate, the schools, which tend to reflect the norms of the society, are constantly being urged to change in a variety of conflicting directions in a futile attempt to satisfy the demands of a variety of disparate groups. The interaction of these conditions, plus the potential collective power of teachers to force their demands, presents a volatile condition characterized by a rising pressure for change. (1970, p. 85)

2

Transformation in School Personnel Administration

A clearer understanding of collective bargaining between public school teachers and boards of education can be gained by comparing this new approach to school personnel administration with the approach practiced in the past. One gets little argument on the proposition that school personnel administration is not what it once was, but has changed. However, the proposition understates the case. It fails to make clear that the traditional "textbook" practice of educational administration indigenous to America and in use for at least 135 years has been replaced by an entirely new and different process. Instead of a mere change in the process by which the schools are managed, a transformation has occurred.

Differences between the old and the new processes of school personnel administration are so fundamental that they preclude the use of more familiar frameworks for assessing and predicting events. A new frame of reference is needed for understanding and assessing the administration of personnel in the schools.

Although the transition from the traditional to the collective-bargaining framework is far from complete, the rate of change since the early sixties has been so rapid that over half of today's public school teachers work in districts that use the new procedures. In the remainder of the

districts, considerable effort is being made either to justify the traditional approach or to plan for change to the new method of organization. There seems to be no middle ground where bargaining is concerned.

Traditional and Emerging Approaches Compared

The new rules of the game by which labor and management bargain collectively are quite different from the traditional frame of reference used by school administrators since the time of Horace Mann and Henry Barnard.

Table 1 lists twenty differences and similarities between the traditional approach to school personnel administration and the collective-bargaining approach. The comparisons are grouped according to three categories: spirit of bargaining, procedures used in each, and power relationships. Examination of the table reveals that the differences between the two approaches greatly outnumber the similarities.

Spirit of bargaining

1. Traditionally, boards of education could, and sometimes did, act unilaterally to cause changes in the public schools. Under the spirit of collective bargaining, an assumption of good faith implies that the board will not act unilaterally, but will consult with its employees before acting. In the past, some administrators did act on the belief that persons to be affected by a decision should be involved in its making. Under the new rules, this belief is fully adhered to and provision is made for its observance in the making of decisions affecting the teaching staff.

2. A second assumption of the traditional approach has been that the board of education and its teaching staff are interdependent and share mutual interests. The parties were seen as needing each other; hence the cliche that what is good for one is good for the other. Under collective bargaining, although teachers and boards admit their interdependence and mutuality of interests in the operation of the schools, they also realize that they have divergent interests that must be honored in the bargaining process. The result is a more realistic assessment of the interests and needs of both parties.

3. The textbook method of administering schools assumed that grievances by individual employees would follow established channels, though in practice these channels were sometimes ill-defined or nonexistent. On the assumption that better morale results when each employee feels that he can carry a grievance past his principal and all the way to the top of the hierarchy, the collective-bargaining framework makes written provisions for handling employee grievances, either with or without the assistance of the exclusive bargaining unit representatives. The result of these written agreements has been to clarify the means by which individual grievances may be resolved.

Table 1

Comparison of Traditional Approach to School Personnel Administration with Collective-Bargaining Approach

Traditional Approach	Collective Bargaining
Spirit of Bargaining	
1. Board could act unilaterally without consultation with its employees.	Consultation with employees required under the good faith assumption.
2. Mutuality of interests and interdependency assumed.	Mutuality of interests and interdependency, plus divergency of interests and needs, are assumed.
3. Grievances and other personnel matters sometimes overlooked.	Grievances and other personnel concerns are considered important, and provisions are made in writing to handle them.
4. Much taken for granted.	Nothing taken for granted.
5. A day's work in teaching often puzzling to determine.	A day's work in teaching and responsibilities specifically defined.
Procedures	
6. One-way communications.	Two-way communications.
7. Narrow sphere of bargaining, often confined to economic matters only.	Parties may elect to bargain on a broad scale.
8. Superintendent represented teachers to the board and the board to teachers.	Both parties represented by expert representatives of their own choosing.
9. Board always had last word.	Impasse procedures provided; neither party can be allowed to paralyze the bargaining process.
10. Courts finally resolved disputes; losers paid costs.	Third parties called in to intervene in resolution of disputes; costs shared equally.
11. Good faith not mandated.	Good faith bargaining mandated and assured legislatively and by written agreement.

Table 1--Continued

Traditional Approach	Collective Bargaining
12. Written personnel policies sometimes lacking.	Written agreements set terms and conditions of personnel administration.
13. Divergencies between policy and practice often went unexplained.	Constant dialogue permits discussion of divergencies between policy and practice.
Power Relationships	
14. Unilateral.	Bilateral.
15. Paternalistic.	Cooperative sharing of decision making.
16. Authoritarian.	Democratic.
17. Management stronger.	Egalitarian.
18. Board more powerful.	Parties equal in power to require performance from other party.
19. Counteroffer not required.	Quid pro quo.
20. Parties not required to meet.	Confrontation mandated.

4. The traditional approach to school personnel administration took much for granted--administrator expectation of teacher performance being the prime example. Collective bargaining begins with the assumption that nothing is to be taken for granted, but that all pertinent aspects of the teacher-administrator relationship are fair game for discussion and negotiations. Since the ordinary short form of the teacher's contract said little about what might be considered the teacher's job, considerable incongruency existed between the teacher's concept of his work and that of his supervisor. Under collective bargaining, such misunderstanding need not exist, because the bargaining dialogue will serve to clarify the parties' points of view.

5. What was to be considered a day's work in teaching was often puzzling to determine. Should the teacher be expected to sponsor an extracurricular student group or to take tickets and keep order at ball games and other school events? Under collective bargaining, the teacher's day can be specified in a written agreement following discussion and mutual understanding. The result, when combined with grievance ma-

chinery by which the teacher may seek resolution of his frustrations, should do much to rid the courts of needless litigation, since bargaining is a process for settling differences without going to court.

Procedures

6. Communications under traditional school administration were often one-way, consisting of messages sent from the central administrative office, though in more recent times attempts have been made to obtain feedback from the staff. Collective bargaining is inherently a two-way communications process. Failure to listen to the other party at appropriate times and in acceptable places amounts to a lack of good faith, and could in some instances be construed as an impasse situation. Continuing two-way dialogue is essential to the bargaining process.

7. Although boards of education have been under no compulsion to consult with employees, many have been willing to listen to employee groups on economic matters. Once a year, for example, the board might listen to the presentation of a teacher salary committee. In the twenty-two states having collective-bargaining statutes, a much wider scope of issues over which bargaining can take place is either permitted or mandated. In those states at least, an attempt is being made to widen the scope of bargaining to include items other than salaries, fringe benefits, and similar employment considerations. The rule in states not having legislation on the subject seems to be that the parties may bargain on a broad scale as long as the board does not lose its final right to determine policy matters (Seitz 1969).

8. In traditional school administration, the superintendent wore two hats--he represented teachers to the board and the board to the teachers. He thus acted as a mediator, bringing the point of view of each party to the attention of the other. Although any system with divided loyalties is inherently weak (Matthew 6:24--"No man can serve two masters. . . "), the system worked as long as each party acquiesced. However, when the bargaining table became the scene of discussion, the administrator had to make the difficult choice of which side of the table he would sit on. Whereas the superintendent under the old system could wear first one hat and then the other, the new framework allowed no such accommodation. The trend so far seems to favor the administrator's sitting on management's side of the table and being "the board's man" in the bargaining process. However, the role of the school administrator in that process is still being reevaluated.

Who should represent the board at the bargaining table? Should the superintendent learn this skill, or should he leave bargaining chores to experts? Presently, this question has no one suitable answer--no two superintendents do it the same way. Theorists tend to favor leaving

bargaining to those who are specially trained, thus freeing the superintendent for tasks more related to the improvement of instruction. However, agreement on this point is by no means unanimous. In cases where the superintendent has "gone too far" in granting concessions to teacher organizations, the attitude is that bargaining for the board is best left to experts, though agreement on the meaning of that term is lacking.

The point is that bargaining should usually be conducted by individuals well acquainted with the techniques involved. No mandate requires that the superintendent occupy this role. Eventually, most bargaining between teachers and boards of education will be done by professional negotiators.

9. In the past the board of education has always had the last word in school personnel matters. Although employees could appeal through administrative channels provided in the law and had ultimate recourse to the courts, the law as written favored the board's position Moreover, the courts would intervene only where someone's rights were in jeopardy or the board had acted capriciously and irresponsibly. Under collective bargaining, either party can unilaterally paralyze the bargaining process. Impasse procedures are provided that include mediation to get the parties back to the table and talking again, fact finding to determine the facts in the dispute, and arbitration to settle differences. Thus, the dialogue can be expected to be continuous, with neither party having the final word.

10. Under traditional school administration, conflict had to be resolved in the courts, in which losers paid the costs, litigation might drag on for interminable periods of time, and the question at issue might be moot by the time a decision was reached. Collective bargaining has several decided advantages in resolving disputes. It is much speedier, particularly where the state's interest is protected by a provision in the statute that a state agency shall intervene after only a short time to reestablish bargaining or to make a final determination of the issue involved. Costs under collective bargaining are shared or may be assumed by the state. Most importantly, collective bargaining allows a settlement to be reached without resort to already overcrowded courts.

11. The term "good faith bargaining" is a product of the National Labor Relations Act of 1935. In its broadest sense, the term has been interpreted to mean that the parties should come to the bargaining table with an intent to reach an agreement. However, bargaining in good faith does not require either party to capitulate.

Many of the twenty-two state statutes now in force mention or require good faith. Some of these authorize the state agency that administers the act to decide whether good faith is lacking or present. Sometimes this is the point at issue when the fact finder is called in . Good faith bargaining does not mean that a party may come to the bargaining table only to listen attentively to all proposals, agreeing or not agreeing to them as he wishes.

Rather, it means that he earnestly seeks resolution of the differences that separate him from the other party, short of capitulation (Seitz 1967).

Some statutes that permit or mandate collective bargaining for teachers outline so-called unfair labor practices, which in effect are instances of lack of good faith by the parties negotiating. Such tactics as determining not to enter into a written agreement, assuming a posture known to be unacceptable, rejecting demands without making counterproposals, or refusing to make adequate rationales for final offers are considered evidences of lack of good faith in bargaining.

Traditionally, the board was not required to bargain at all with its employees, much less bargain in good faith. The concept of good faith bargaining can therefore be expected to be totally unfamiliar to bargainers in education. What, for example, is the difference between hard-nosed bargaining and failure to bargain in good faith? Since the line between having and not having good faith is sometimes indistinct, this area will continue to be a source of controversy in public education. To understand this concept more clearly, educators should become familiar with the great number of experiences on this subject that have accumulated in the private sector.

12. Although boards traditionally have expressed in written policies those rules and regulations that they wished to follow, such written policies suffered from many defects in practice: they were made unilaterally by management, were often poorly understood by employees, and were seldom revised. In contrast, collective bargaining results in a written agreement that sets forth the conditions of employment and other agreed-upon items in detail. Collective-bargaining agreements must be composed bilaterally. Although in writing the agreement the parties may become deeply involved in semantics, they usually come closer to a final meeting of the minds.

In some states, especially those having no public collective-bargaining statute, the legality of the written agreement may be in some doubt. However, even lacking full legality, the major contribution of the agreement is that it is mutually arrived at, representing the best that each party can do to compromise across the bargaining table.

13. The written agreement serves as a constant reminder of the terms agreed upon by the parties and signed into functional existence. Earlier in school administration, considerable divergency between policy and practice often went unexplained. Now, under collective bargaining, constant dialogue between the signatories permits full discussion of any divergencies between policy and practice in the public schools of the district.

Power relationships

14-18. Perhaps the most significant contribution of collective bar-

gaining is to be found in the changed power-relationships between school employees and the board of education. Although collective bargaining is not to be looked upon as a display of raw power, neither is it to be mistaken for rational problem-solving. Rather, it is almost universally a combination of both. The mix, or combination of extremes, is determined by whatever issues, circumstances, and limitations of time are pertinent and by the skills and personalities of the bargaining parties (Schmidt, Parker, and Repas 1967).

The model used in traditional school administration was the pyramid, with the flow of power from the people to the legislature, to the school board, to the school superintendent and through his assistants to the classroom (hence the term "classroom management"). The teacher was seen as a "line" officer bearing some of the authority of the state, and recognized as standing in loco parentis to the students under his supervision and control. Glasser points out that such an arrangement leads to a situation that cannot be defended from a democratic standpoint:

> There are only two public institutions in the United States which steadfastly deny that the Bill of Rights applies to them. One is the military and the other is the public schools. Both are compulsory. Taken together, they are the chief socializing institutions of our society. Everyone goes through our schools. What they learn--not what they are formally taught but from the way the institution is organized to treat them--is that authority is more important than freedom, order more precious than liberty, and discipline a higher value than individual expression. That is a lesson which is inappropriate to a free society--and certainly inappropriate to its schools. (Emphasis added) (1969)

Replacing the pyramid model is collective bargaining. Under this new model, unilateral power relationships become bilateral relationships in which neither party is stronger than the other. Instead of a paternalistic, authoritarian situation in which management is stronger, the new relationships at the bargaining table are cooperative, democratic, and egalitarian.

If the parties are not equal in power, the theory is that the law should make them so. If either party can impose its will upon the other, then bargaining in the true sense is impossible and a sham. Although presently in public employment the parties are not legally equal, they are in fact equal where the employees have the power, if not the right, to strike. For this reason, some argue for legalizing the strike under certain limited conditions. According to this argument, to deny public employees the right to strike is to deny the validity of an important postulate of collective bargaining: that the parties

must in fact be equal in their power relationships. Although this postulate is recognized in the federal legislation on bargaining in the private sector, it has steadfastly been denied by government agencies in their dealings with public employees and has consistently been rejected in the drafting of state legislation. Unfortunately, society cannot profitably borrow parts of the collective-bargaining framework without indeed borrowing all of it. Model federal legislation being drafted by the National Education Association does provide for the right to strike.

19. Good faith bargaining would not be fully effective without the quid pro quo principle: For every offer made in good faith, a counteroffer should also be given or, if not given, reasons should be stated why not. This is an important principle in collective bargaining, since it is through the give and take at the table that consensus is finally reached. Although this give and take is procedural, it is also related to the parties' exercise of power. Without quid pro quo, collective bargaining would be impossible. The principle is an assurance of good faith as long as each offer represents an honest effort to reach an agreement. In contrast, under traditional school administration, where offer and counteroffer are not required, no meaningful bargaining can take place.

20. Finally, the parties in collective bargaining are entitled to confront each other. Confrontation is one of the elements of due process guaranteed in the Constitution. When confrontation is allowed, the principle of justice is better served. If, in bargaining, one side refuses or neglects to confront the other, intervention by a third party should be assured to bring the parties back together or else the process will fail for lack of dialogue.

In chapter 3, state statutes related to bargaining for teachers will be examined in the light of these basic postulates of collective bargaining. The extent to which the postulates are honored and the probable consequences of honoring or disregarding them will be explored.

3

State Legislation

Wisconsin was the first state to enact legislation granting collective-bargaining rights to public employees. The original act was passed in 1959 and amended in 1961. Alaska enacted a similar statute in 1962, but not until 1965, when seven states (California, Connecticut, Florida, Massachusetts, Michigan, Oregon, and Washington) enacted enabling legislation, did the movement toward state legislation for bargaining by teachers finally catch on.

In 1966, two more states, New Jersey and Rhode Island, followed suit. In 1967, Connecticut revised its former statute and four states (Minnesota, Nebraska, New York, and Texas) enacted initial legislation on the subject. Two states, California and New Jersey, revised former legislation in 1968, while Maryland enacted original legislation. In 1969, four states (Connecticut for the second time, Nebraska, New York, and Oregon) revised former statutes, while six states (Maine, Nevada, New Hampshire, North Dakota, South Dakota, and Vermont) enacted original acts. By October 1, 1969, twenty-two states had legislation permitting or mandating school boards to bargain with public school teachers.

Despite the lack of enabling legislation in the other twenty-eight states, considerable bargaining between teachers groups and boards of education has occurred in these states, as table 2 shows. For example,

Table 2

Enabling Legislation and Percent of Instructional Personnel in Public Schools Bargaining with Boards of Education by State October 1, 1969

State	Statute	When Enacted	When Revised	Percent of Instructional Personnel Bargaining*
Alabama	No			0.0
Alaska	Yes	1962		95.4
Arizona	No			68.9
Arkansas	No			21.0
California	Yes	1965	1968	96.0
Colorado	No			82.4
Connecticut	Yes	1965	1967,1969	87.3
Delaware	No			28.9
Florida	Yes	1965		43.5
Georgia	No			0.0
Hawaii	No			0.0
Idaho	No			49.0
Illinois	No			65.5
Indiana	No			39.2
Iowa	No			24.7
Kansas	No			62.5
Kentucky	No			36.9
Louisiana	No			0.0
Maine	Yes	1969		31.6
Maryland	Yes	1968		88.9
Massachusetts	Yes	1965		80.1
Michigan	Yes	1965		97.8
Minnesota	Yes	1967		82.7
Mississippi	No			0.0
Missouri	No			46.7
Montana	No			30.6
Nebraska	Yes	1967	1969	67.3
Nevada	Yes	1969		23.5
New Hampshire	Yes	1969		29.1
New Jersey	Yes	1966	1968	48.9
New Mexico	No			49.9
New York	Yes	1967	1969	91.1
North Carolina	No			1.7
North Dakota	Yes	1969		59.9
Ohio	No			69.1

Table 2--Continued

State	Statute	When Enacted	When Revised	Percent of Instructional Personnel Bargaining *
Oklahoma	No			12.3
Oregon	Yes	1965	1969	90.1
Pennsylvania	No			41.8
Rhode Island	Yes	1966		92.4
South Carolina	No			3.1
South Dakota	Yes	1969		26.8
Tennessee	No			29.3
Texas	Yes	1967		29.7
Utah	No			50.4
Vermont	Yes	1969		26.4
Virginia	No			25.9
Washington	Yes	1965		95.2
West Virginia	No			11.2
Wisconsin	Yes	1959	1961	72.2
Wyoming	No			53.6
Totals	22 Yes 28 No	1959-1 1962-1 1965-7 1966-2 1967-4 1968-1 1969-6	1961-1 1967-1 1968-2 1969-4	58.7

*Negotiation Research Digest, June 1969, p. B-5.

in Colorado, having no enabling statute, 82.4 percent of the instructional personnel were engaged in bargaining. Similarly, 68.9 percent of all teachers in Arizona were bargaining with boards of education, 65.5 percent in Illinois, 62.5 percent in Kansas, and 69.1 percent in Ohio. Thus, the absence of enabling legislation does not appear to hamper collective bargaining between teachers groups and boards of education.

In 1969, the National Education Association reported that 43.4 percent of the nation's school systems having enrollments of 1,000 or more pupils had agreements between teachers groups and boards of education. At the same time, 58.7 percent of all instructional personnel in the country were engaged in bargaining (NEA 1969). Comprehensive agreements, those at the "third level" of sophistication, had increased, according to the NEA, from 398 in 1966-67 to 1,200 or more in 1968-69,

an increase of 200 percent in about two years' time (NEA 1969).

Seven states had experienced little activity in teacher bargaining by the end of 1969, with less than 10 percent of their instructional personnel negotiating. These states are Alabama, Georgia, Hawaii, Louisiana, and Mississippi, all with none; North Carolina, with 1.7 percent; and South Carolina, with 3.1 percent. In five other states, less than 25 percent of the instructional staff engaged in bargaining : Arkansas, 21 percent; Iowa, 24.7 percent; Nevada (which enacted new legislation in 1969), 23.5 percent; Oklahoma, 12.3 percent; and West Virginia, 11.2 percent.

Analysis of State Statutes

In a study conducted by the author, the contents of all twenty-two state statutes in effect in 1969 were analyzed according to four criteria:

- How broad is the scope of bargaining allowed?
- Are separate bargaining units provided for administrators and teachers?
- Is third-party intervention provided in cases of impasse between boards and teachers?
- Are teachers permitted legally to strike?

The findings are reported in tables 3, 4, 5, and 6.

Scope of bargaining

Examining table 3, we see that the majority of the state statutes on collective bargaining in public employment favor a broad rather than a narrow scope of bargaining. The term "wages, hours, and conditions of employment," which was borrowed intact from the private sector and which connotes broad-scale bargaining, is used in half of the statutes. In the other eleven statutes, similar terms were employed to allow an equally broad range of bargaining. An elastic clause, "including but not limited to," also was used in some of the statutes.

Two of the statutes include the word "professional" or the words "professional services." The Oregon statute defines the scope of bargaining as "salaries and related economic policies affecting professional services." Similarly, the Minnesota statute specifies the scope of bargaining as "conditions of professional services and educational and professional policies, relationships, grievance procedures and other matters," and defines "conditions of professional services" as meaning "economic aspects relating to terms of employment, but does not mean educational policies of the district." The net effect in each case is to emphasize a broad scope of bargaining for teachers and boards of education.

Table 3

Comparison of Statutes on Scope of Bargaining
October 1, 1969

State	Reference in Statute to Scope of Bargaining
Alaska	Grievances, terms or conditions of employment, or other mutual aid or protection of employees
California	All matters of employment conditions, including but not limited to wages, hours, and other terms and conditions of employment
Connecticut	Salaries and other conditions of employment about which either party wishes to bargain
Florida	Policies affecting certificated personnel
Maine	Wages, hours, working conditions, and binding grievance arbitration; may consult but not bargain with respect to educational policies
Maryland	Salaries, wages, hours, and other working conditions
Massachusetts	Wages, hours, and other conditions of employment
Michigan	Rates of pay, wages, hours of employment, and other conditions of employment
Minnesota	Conditions of professional services, and educational and professional policies, relationships, grievance procedures, and other matters
Nebraska	Terms and conditions of employment and the administration of grievances
Nevada	Wages, hours, and conditions of employment
New Hampshire	Salaries, working conditions, personnel policies, transfer, and grievances
New Jersey	Terms and conditions of employment
New York	Terms and conditions of employment and the administration of grievances
North Dakota	Terms and conditions of employer-employee relations, including salaries, hours, and other terms and conditions of employment

Table 3--Continued

State	Reference in Statute to Scope of Bargaining
Oregon	Salaries and related economic policies affecting professional services
Rhode Island	Hours, salaries, working conditions, and all other terms and conditions of professional employment
South Dakota	Grievances and conditions of employment
Texas	Matters of educational policy and conditions of employment
Vermont	Salaries, related economic conditions of employment, procedures for processing grievances, and other mutually agreed-upon items not illegal
Washington	(Enumerated) Curriculum, textbook selection, in-service training, student teaching programs, and other topics
Wisconsin	Wages, hours, and conditions of employment

Some of the statutes attempt to spell out specifically the scope of bargaining. The Winton Act in California, for example, enumerates the following areas for negotiations:

> 13085. A public school employer or the governing board thereof, or such administrative officer as it may designate, shall meet and confer with representatives of employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to all matters relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law. . .

Separate bargaining units

The statutes are evenly divided on the kinds of public employees they cover. Eleven of the statutes apply to certificated school personnel

only (in most cases the superintendent is excluded from the bargaining, while in a lesser number so are his assistants). The other eleven statutes cover all government employees, including public school teachers. The Michigan statute applies to all public employees except state civil service employees, who were already covered by the civil service statutes.

The states whose statutes apply only to certificated professional personnel are Connecticut, Florida, Maryland, Minnesota, Nebraska, North Dakota, Oregon, Rhode Island, Texas, Vermont, and Washington. Illustrative of these laws is the Vermont statute enacted in 1969. The purpose of the act is as follows:

> In order to forward the orderly growth and development of education in Vermont it is hereby declared to be the policy of the state to promote the improvement of communications and agreements between certificated employees of the schools within the state and the school boards of those schools by providing a procedure where certificated school employees may join associations of their choice and be represented by such associations in arriving at agreements with school boards on the terms and conditions of their professional service and other matters mutually agreed upon. (Vt., No. 127 of the Acts of 1969, Sec. 1)

The states having laws that apply to all public employees are Alaska, California, Maine, Massachusetts, Michigan (except civil service employees of the state), Nevada, New Hampshire, New Jersey, New York, South Dakota, and Wisconsin. An example of these laws is the Maine statute, whose purpose is as follows:

> It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment. (R. S., Title 26, Ch. 9-A, Maine 1969)

The question whether teachers and school administrators should belong to the same bargaining unit was once an issue between the American Federation of Teachers and the National Education Association. The traditional policy of unions in the private sector has been that supervisory personnel should not belong to the same unit as the rank and file members of the union. The AFT therefore took the position that separate bargaining units should be provided for school administrators and teachers. The NEA, stressing "a united profession," held to the proposition that the similari-

ties of needs and objectives between principals and teachers are more important than their differences. However, this is less an issue between the two groups than it formerly was, since a trend seems to be developing for local affiliates of both groups to merge into one teachers organization. Teachers in Los Angeles, Flint, Michigan, and one or two other cities are setting the pace.

Table 4 lists the positions the state statutes take on the issue of separate bargaining units.

Six of the statutes do not mention separate bargaining units for administrators and teachers. Whether the issue was considered too controversial or too insignificant to specify in law is not clear. The contents of these statutes vary widely with respect to bargaining unit identification, recognition, and control. The Alaska statute, for example, is sketchy, totaling approximately 200 words, hardly long enough to enumerate the guarantees to the parties. The apparent reason for the statute's brevity is the assumption that the courts, in the long run, will have to determine the specific guidelines for bargaining in that state. The other states whose statutes are silent on this issue are Minnesota, Nebraska, Texas, Washington, and Wisconsin, though in the latter state separate bargaining units are allowed in practice. In Washington, although no mention is made of the public schools, personnel in community colleges have been permitted to form separate bargaining units.

An examination of the statutes that do take a stand on the issue of separate units reveals that this problem is far from solution. The positions taken by the states vary widely. In Connecticut, for example, administrators have the option of remaining with teachers or forming a separate unit of their own for bargaining purposes. On the other hand, the Nevada statute deals with this problem according to the size of the district. The law provides that, where the district employs more than five principals, administrators below the rank of assistant superintendent shall not belong to the same bargaining unit as public school teachers, but may join with others of the same specified rank to bargain as a separate unit. Where the district employs fewer than five principals, both administrators and teachers may belong to the same bargaining unit.

The New Jersey law defines the bargaining unit "with due regard for the community of interest among the employees concerned." Several states empower the state labor relations commission to determine the appropriateness of including certain school employees within the bargaining unit with teachers.

A notable feature of most statutes is that the superintendent of schools is excluded from the bargaining process. Just what this official's position or role is supposed to be is not clear from a perusal of these statutes (Carlton and Goodwin 1969, p. 150). Other than being an agent for management, the role of the superintendent of schools in the bargaining process is generally a matter of local option.

Table 4

Comparison of Statutes on Issue of Separate
Bargaining Units for Administrators and Teachers
October 1, 1969

State	Reference to Bargaining Units
Alaska	Not specified.
California	Negotiations council is structured according to proportional representation of units' membership.
Connecticut	Administrators have the option of remaining with teachers or forming separate unit.
Florida	Unit shall include both teachers and administrators.
Maine	Determination to be made by state commissioner, but teachers may be included "in a unit consisting of other certificated employees."
Maryland	No more than two units in any county or Baltimore City.
Massachusetts	State Labor Relations Commission determines appropriateness of bargaining units.
Michigan	Unit must be appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939.
Minnesota	Not specified.
Nebraska	Not specified.
Nevada	A principal, assistant principal, or other school administrator below the rank of superintendent, associate superintendent, or assistant superintendent shall not be a member of the same negotiating unit with public school teachers unless the school district employs fewer than five principals, but may join with other officials of the same specified rank to negotiate as a separate negotiating unit.
New Hampshire	Separate units neither prohibited nor required under terms of the act.
New Jersey	The negotiating unit is defined with due regard for the community of interest among the employees concerned; commission may intervene in matters of recognition and unit definition except in the event of a dispute.

Table 4--Continued

State	Reference to Bargaining Units
New York	Separate units provided for.
North Dakota	Separate units provided for.
Oregon	May separate by a majority vote of either category.
Rhode Island	Statute refers only to teachers in the public schools; administrators excluded from provisions of the act.
South Dakota	Not prohibited; labor commission on request shall rule on appropriateness of representative unit.
Texas	Not specified.
Vermont	School employees may join or not join organizations of their own choosing; may have separate units.
Washington	Not specified, but community colleges may have separate employee organizational units.
Wisconsin	Not specified, but separation is allowed in practice.

A national survey of the role of superintendents and board members in teacher bargaining, during the three-year period 1966-69, is reported in the October 1969 issue of Negotiation Research Digest. Several significant changes in the character of and participants involved in teacher-board of education bargaining were noted. The number of superintendents who represented both the board and the teachers decreased 10 percent over the period, while the number of superintendents who acted as advisors to only the board rose correspondingly. The proportion of superintendents who bargained with full authority dropped from two-fifths in the first two years of the study to one-fifth in 1968-69.

Some evidence indicates that the role of the superintendent in bargaining with teachers may be a function of school district size. In school districts having 100,000 or more pupils, the study found that school administrators other than the superintendent typically bargained for the board. In districts enrolling between 12,000 and 99,999 pupils, the main pattern was for superintendents, together with other school officials, to represent the board in bargaining. In the smaller districts enrolling between 1,000 and 11,999 pupils, the most frequent pattern was for some board members and the superintendent to represent the board jointly.

The percentage of bargaining teams made up exclusively of board members declined consistently during the three years under study, while

mixed teams of board members and administrators consistently increased.

Third-party intervention

Table 5 illustrates the extent to which the statutes provide for third-party intervention in case of impasse. Here the criterion was not whether extralegal or self-help provisions were available to the impassed parties, but rather whether the state--which has the overriding interest in peaceful relations between school teachers and their employing boards--provides assistance in the resolution of impasses.

In some of the earlier statutes, attempts were made to help the parties to help themselves through the provision that they might resolve the impasse by each choosing a person to sit on a panel; these two would in turn choose a third person to act as chairman of the panel. This was known as the "tripartite" method of resolving impasses, and worked when the three members of the panel were in agreement. However, it was disastrous when they were unable to agree.

Since much of the tripartite process was "advisory only," it lacked the precision, finality, and state-level control that characterize many recent statutes. These recent statutes have been more successful because the states recognized their obligation to provide third-party intervention at state expense and created state-level machinery for the implementation of this belief.

Typically, impasse resolution progresses through three stages or levels. The impasse machinery provided by the statutes generally operates at these levels: (1) the conciliatory-mediation stage, (2) the fact-finding stage, and (3) the arbitration stage. In the latter stage, some states provide that the arbitration shall be binding upon the parties if they choose to make it so, provided, however, that the decision does not deprive the local board of education of its right to make final decisions as provided in other sections of the school code.

As table 5 reveals, five statutes make no mention of third-party intervention of any kind in the event of impasse between teachers groups and the board of education. Of the remaining seventeen statutes, seven provide for third-party intervention by some agency of state government, such as Maine's Board of Arbitration, Michigan's Labor Mediation Board, or Wisconsin's Public Employees Relations Board. In most instances, such state agencies are created specifically for the purpose of dealing with public employee relations entirely. The rationale behind their creation is that the state has a stake in peaceful relations between workers and government--a stake so great as to cause the state to administer the act through its own special board. The rationale is a sound one.

These seven statutes likewise include a definite time-table to establish deadlines controlling the length of time (critical path) allowed before action is taken by the state agency administering the law. Such time-tables

Table 5

Comparison of Statutes on Issue of Third-Party Intervention in Cases of Impasse
October 1, 1969

State	Reference to Third-Party Intervention
Alaska	Not provided for.
California	Not provided for.
Connecticut	State Board of Education may order mediation and/or arbitration; advisory panel is used.
Florida	Not provided for.
Maine	Yes, either by mutual agreement or by appeal to Maine Board of Arbitration.
Maryland	Yes, State Superintendent of Schools, State Board of Education, and tripartite panel are used.
Massachusetts	Yes, by State Board of Conciliation and Arbitration.
Michigan	Michigan Labor Mediation Board.
Minnesota	An adjustment panel is provided by the school board.
Nebraska	Court of Industrial Relations.
Nevada	Three-member public board created for this purpose.
New Hampshire	Three-member state commission created for this purpose.
New Jersey	New Jersey Public Employment Relations Commission.
New York	Public Employment Relations Board created for this purpose.
North Dakota	Education fact-finding commission.
Oregon	Use of consultants (tripartite) who recommend reasonable basis for settlement.
Rhode Island	Binding arbitration on all matters not involving expenditures of money.
South Dakota	No mention made of mediation, fact finding or arbitration.
Texas	Not provided for.
Vermont	Self-help or American Arbitration Association, but no state agency provided for.
Washington	State Superintendent appoints advisory commission that makes written recommendations.
Wisconsin	Wisconsin Employment Relations Board created for this purpose.

tend to keep a rein on the impasse procedure, since the parties are expected to resolve their differences within a specified length of time or the next process will automatically be called into play.

In the twenty-eight states not having collective-bargaining statutes, the procedure most commonly used to resolve impasses is probably a voluntary arrangement between the parties. Lieberman and Moskow (1966, p. 323) point out that, this being the case, it is too early to make confident generalizations about the development of such procedures in the future. "It appears that teacher organizations regard themselves as the weaker party in negotiations; hence, they are more likely than school boards to stress reliance upon third-party intervention. This attitude may change if and when teacher organizations develop a greater measure of bargaining power, as they are likely to do" (1966, p. 324).

Voluntary arrangements by which the parties choose mediators, fact finders, and arbitrators often include a role for the American Arbitration Association. This nonprofit organization provides numerous services to parties in impasse situations, such as holding elections and providing arbitrators and lists of persons skilled in mediating educational matters. The organization also publishes the results of arbitration cases in the public service, holds seminars and training sessions for mediators, and collects and analyzes awards.* The contributions of the American Arbitration Association are thus significant in a period when many states still lack statutes governing and controlling this important aspect of collective bargaining in public education (Tracy 1969).

Legal right of public employees to strike

Although the NEA bill pending in Congress and several bills introduced into legislative hoppers throughout the country have contained the limited right for public employees to strike, no state has as yet allowed its teachers to have this important right.** Theodore W. Kheel, prominent arbitrator in labor disputes and permanent arbitrator in the Transit Industry of New York, says on this point:

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*AAA stresses that although arbitrators write their decisions for the parties, not primarily for publication, some awards in published form become important guides that may be used by other arbitrators in subsequent decisions. By waiving the rules of privacy that otherwise govern AAA arbitration, the parties can contribute to a body of material on which the entire country can draw.

**In May 1970, after the research for this paper was completed, Hawaii became the first state to legalize the right of its government employees, including teachers, to strike under limited conditions.

> For better or worse, the conclusion is inescapable that collective bargaining cannot exist if employees may not withdraw their services or employers discontinue them. This is not a statement of preference, but a statement of fact.
>
> . . .I believe this can be done by using the formula of the Taft-Hartley Law for emergency disputes. Let us not deceive ourselves. When all strikes are barred, collective bargaining or joint determination is out, except to the extent that express or implied threats to violate the law create a bargaining atmosphere, which is hardly the way to encourage respect for law. There are only two real substitutes for bargaining: either the employer makes the final determination or it is made by a third party, an arbitrator. (Kheel 1969, p. 52)

Nevertheless, following the strikes by teachers in New York City, New York's Taylor Law was amended to include stiffer penalties for strikes by public employees. Already one of the most punitive laws on strikes by public employees, the law now provides, in addition to fining the union as an organization and imprisonment of union officials, that any employee who is absent without permission during a strike will be presumed to have participated in the strike and will be placed on probation for one year, lose two days' pay for each day he was on strike, and be subject to removal or other disciplinary action provided by law for misconduct. The striking union may lose deduction-of-dues privileges, and if it strikes in defiance of a court injunction,it will be fined an amount limited only "by the discretion of the court."

Table 6 compares the statutes' provisions on the right of public employees to strike. Of the twenty-two statutes listed, none provides public employees the right to strike. Eight make no mention of the right to strike by public employees. The other fourteen fall into two categories: those that impose no penalty while outlawing the right to strike, and those that impose a penalty for illegal work slowdown, stoppages, or strikes by public employees.

Among the states that prohibit the strike but without specific penalties, Connecticut provides for injunctive relief without a hearing by the courts, but requires a hearing if such action is challenged. Although the Nebraska statute itself does not prohibit the strike, a related statute does. The other states falling in this category are Maine, Massachusetts, Michigan, New Jersey, Texas, and Vermont.

Six states--Maryland, Nevada, New Hampshire, New York, North Dakota and South Dakota--provide specific penalties in case of illegal strikes by public employees. Typical penalties include loss of dues-witholding privileges, loss of exclusivity, fines and imprisonment of union officials, fines against the organization backing the strike, loss of wages during time teachers are on strike, and injunctive relief forcing teachers back into the schools.

Table 6

Comparison of Statutes' Provisions on Public Employees' Right to Strike
October 1, 1969

State	Reference in Statute on Right to Strike
Alaska	Not specifically mentioned.
California	Not specifically mentioned.
Connecticut	Strikes by teachers prohibited; injunctive relief given without hearing by courts; hearing required if challenged.
Florida	Not specifically mentioned.
Maine	The following prohibited: stoppage, slowdown, strike, or blacklisting of any public employer.
Maryland	Teachers prohibited from calling or directing a strike; loss of dues-withholding invoked for violations; also loss of exclusivity right.
Massachusetts	The following prohibited: strike, work stoppage, slowdown, or withholding of services by employees.
Michigan	Strike expressly prohibited.
Minnesota	Not specifically mentioned.
Nebraska	Not specifically mentioned.
Nevada	Teachers organization must pledge in writing not to strike; penalties are provided for violations.
New Hampshire	All written agreements must contain no-strike clause; decertification and personal penalties provided for violations.
New Jersey	Prohibited in statement of purpose of the act.
New York	Strikes specifically prohibited and penalties provided for those organizations and officers of organizations who violate the act.
North Dakota	Strike prohibited; loss of wages during time each teacher on strike.
Oregon	Not specifically mentioned.

Table 6--Continued

State	Reference in Statute on Right to Strike
Rhode Island	Not specifically mentioned.
South Dakota	Strike prohibited and heavy penalties provided for violations; injunctive relief provided for school boards in event of strike.
Texas	Organizations of employees must not claim the right to strike.
Vermont	Injunctive relief against "specific acts" that pose a clear and present danger.
Washington	Not specifically mentioned.
Wisconsin	Strike expressly prohibited.

The South Dakota statute, after providing heavy penalties for illegal strikes by teachers, states that "nothing contained in this act shall be construed to limit, impair, or affect, the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment with the full, faithful and proper performance of the duties of employment." Thus, although public employees may object to "wages, hours and conditions of employment," they are precluded from striking to seek a change.

Federal antistrike legislation dates from 1912 when postal employees were granted the right to join unions but denied the right to strike. Over the years, this prohibition was extended to include other federal employees. In 1947, the Taft-Hartley Act reaffirmed the antistrike policy of the federal government.

Today, the question whether public employees should have the right to strike is undoubtedly one of the most important issues facing the government. A comprehensive reexamination of the no-strike policy for public employees in resolving contract disputes is being conducted. For many years, government employee unions voluntarily included no-strike clauses in their constitutions or operated under long-standing resolutions condemning the strike. However, at their 1968 conventions, two postal unions, the Fire Fighters, and the National Association of Government Employees deleted their no-strike policies and directed that further studies on the issue be conducted.

The 1960s have witnessed a steady increase in the number of strikes

by public employees. In 1966-67, for example, the number of man-days lost through strikes by government employees was greater than for all the preceding eight years combined (Hall 1968).

Until the question is settled one way or the other, no lasting peace between governmental workers and their employer-governments will be possible. Antistrike clauses in contracts, punitive laws against the strike, and threatened injunctions against governmental workers who strike have not produced a cessation of strikes by organizations of public workers. One alternative not yet tried is that of legalizing the strike under limited conditions as suggested by Kheel.

Summary of Legislation

Twenty-two states had statutes that either permitted or mandated collective bargaining between teachers organizations and boards of education in late 1969. Evidence suggests that this number will grow appreciably during the 1970s, perhaps to include all states. Fifty-eight percent of all instructional personnel in the nation were engaged in collective bargaining as the decade came to a close. Many states, even some without enabling legislation, were heavily involved in bargaining between public school teachers and their boards of education. Seven states, mostly in the South, experienced little bargaining.

Thus, no direct relationship exists between the proportion of teachers engaged in bargaining and the presence of enabling legislation within the state. There was evidence that, in the absence of controlling legislation throughout the country, the Congress has sufficient constitutional basis for enacting public laws to mandate collective bargaining for all government employees in all the states (Maryland v. Wirtz, 88 s. ct. 2017, 1968; McLaughlin v. Tilendis, 398 F.2d 287, 1968).

A bias against worker organizations inherited from English law held back the formation and recognition of organizations of workers until the passage of the Wagner Act in 1935. Public employees, however, were excluded from the provisions of this act, and only now are seeking rights long enjoyed by workers in the private sector of the economy.

The earliest state legislation enabling teachers to bargain with boards of education dates from 1959 in Wisconsin. Other statutes were enacted in 1962 (1), 1965 (7), 1966 (2), 1967 (4), 1968 (1), and 1969 (6). Revisions of teacher bargaining laws have been made in seven states on eight occasions.

The statutes were analyzed according to the following four criteria:

- Does the statute allow a broad scope of bargaining?
- Does the statute provide for separate bargaining units for administrators and teachers?

- Does the statute provide for third-party intervention by the state in case of impasse?
- Does the statute permit public employees, including teachers, legally to strike?

No statute meets all the criteria. The greatest agreement among the statutes concerns the scope of bargaining. With few exceptions, the statutes provide for a broad rather than a narrow scope of bargaining, including wages, hours, and conditions of work, but not necessarily limited to these items alone. The statutory provisions in general thus do not limit bargaining to economic matters.

Most statutes also favor separate bargaining units for administrators and teachers. Once an issue between the two rival teacher organizations, the concept of separate bargaining units is now widely accepted in the statutes and is generally practiced even in the states having no legislation on teacher bargaining.

Third-party intervention is provided by most of the statutes, but many do not designate the state as the third party. State-level agencies are designated by seven statutes to furnish services related to such functions as the holding of elections, mediation, fact finding, and arbitration of impasses. State intervention seems to this writer the most sound method of achieving peaceful relationships between public workers and their governmental boards of control.

By the end of 1969, no state had legalized the strike. (A Montana statute legalizing the strike for public health nurses in that state under limited conditions was being watched with interest.) Although lacking the legal right to strike, teachers still possess the power to strike. Punitive legislation, no-strike clauses in written agreements, and court injunctions have not prevented strikes by teachers.

Some writers have asserted that public managers, who come to the bargaining table with the knowledge that public employees have generally renounced the right to strike, have bargained in bad faith. Others postulate that collective bargaining between public employees and managers, as a process, will not work without the legitimization of the right for employees to strike under limited conditions. Perhaps the right to strike will be the cardinal issue in the 1970s as governmental bodies prepare to enter into long-time bargaining with public employees.

4

Grievance Procedures

No written agreement between a teachers organization and a board of education can enable the contracting parties to work together amicably under rules designed for their mutual benefit if it fails to include a means for resolving employee grievances. The administration of the grievance procedure is particularly crucial in applying the collective intent of the written agreement to the actual experience of each employee.

Grievance procedures are an important part of the new relationships introduced into school administration by collective bargaining between teachers and boards of education. Evidence suggests that good morale results when a proper balance can be maintained between protecting the authority of the principal and other administrators and preventing the abuse of this authority. The point at which management (the principal) and the rank and file (the teacher) come into contact is the point at which this balance must be maintained. Thus, the effectiveness of the grievance machinery is of paramount importance to the success of any written agreement between a teachers organization and the board of education (Kramer 1969).

Definitions of grievance range all the way from "a grievance is whatever a teacher thinks is a grievance" to hard and fast rules as contained

in most written agreements. The NEA provides this simple definition: "A grievance involves possible misapplication of the school district's adopted policies and/or state education laws." The agreement between the Denver Classroom Teachers Association and the Denver Board of Education defines a grievance as "a complaint by a teacher, or teachers, in the negotiating unit that there has been a violation, a misinterpretation, or inequitable application of any of the provisions of this Agreement, except that the term 'grievance' shall not apply to any matter as to which (1) the method of review is prescribed by law, or (2) the Board is without authority to act" (NEA 1968).

Massey offers this general definition of a grievance procedure: "a means of formally raising questions on interpretation of the agreement" (1969).

Stinnett, Kleinmann, and Ware (1966) report that even in some states not having collective-bargaining laws, "specific statutes pertaining to the processing of employee grievances" have been enacted. Although grievance machinery can exist apart from collective-bargaining statutes, teachers have little hope their grievances will be acted upon unless the board wishes to process them. Some grievance procedures have been unwritten. To press a grievance where no procedures for doing so are formalized in writing, a teacher has to "go through channels," which involves the risk of insubordination if he goes over the head of his principal.

In 1969, much more realistic grievance procedures were in effect under collective bargaining than under traditional ways of governing the schools.

As the 1970s began, the unresolved questions facing teachers organizations and boards of education included these:

1. Should a grievance procedure conclude with final and binding arbitration?
2. What stages or steps in the grievance procedure are most effective?
3. Should the teacher be represented by the exclusive bargaining unit of teachers at all levels of the grievance procedure?
4. What should be the role of the teachers organization in the processing of a grievance?
5. Should permanent or ad hoc arbitrators be utilized in the resolution of grievances?
6. Should grievance procedures be mandated by a state statute or be worked out mutually between the teachers organization and the board of education?
7. What are the characteristics of a sound grievance procedure?
8. What is the role of the principal in grievance resolution? (Lutz and others 1967 and Shils and Whittier 1969)

From an examination of 216 contracts between teachers and boards of education in Michigan, Shils and Whittier (1968) reported that one-third provided for binding arbitration of grievances. Binding arbitration is a quasi-judicial process, the chief advantage for teachers and boards of education being that it is speedier, less costly, and more direct than settlement of disputes through already overcrowded courts. Recommendatory arbitration, though not binding, has the advantage of fully disclosing its recommendations to the public, making it extremely difficult for the superintendent and the board to ignore them.

One outcome of the wider use of grievance machinery is the realization by both the board and the teachers organization that each must support its position with documentary evidence. More care must be exercised in preparing the evidence than was formerly required. For example, if a teacher challenges an unsatisfactory rating by his administrator, the arbitrator will want to know whether the administrator observed the teacher in his actual teaching situation. Proper records must be kept and sufficient specificity presented to support the case on each side of the issue.

Undoubtedly, grievance procedures will provide the bases for discussion, at annual bargaining sessions, of particular policies that have not been effective. The net result should be closer dialogue and better understanding between teachers and boards of education because of the use of grievance procedures mutually arrived at.

Use of Grievance Machinery

The full extent of the use of grievance machinery by teachers and boards of education is difficult to assess. In a study by the NEA's Negotiation Research Digest (January 1968) of the 1,540 negotiation agreements filed with the NEA Research Division for the 1966-67 school year, 370 (24 percent) were found to use some kind of grievance procedure. Of these 370 agreements, 314 (85 percent) provided for the final appeal to be made to an agency outside the local school district. Final and binding arbitration was the terminal point in 35 percent of the grievance procedures.

Nine-tenths of the grievance procedures in effect in 1966-67 were contained in agreements from states having bargaining statutes. Of all written agreements on file with the NEA from Michigan, 95 percent contained a grievance procedure; of those from Massachusetts, 83 percent contained a grievance procedure. In the latter state, 62 percent of the procedures required that grievances be settled through final and binding arbitration. However, this state is an exception. Others had far fewer written agreements that required final and binding arbitration of grievances: Rhode Island, 22.2 percent; Connecticut, 17.2 percent; New York,

6.4 percent--all in New York City; and Pennsylvania, Illinois, Wisconsin, and New Jersey, even fewer.

Of the 314 grievance procedures that call for the use of an outside agency, 142 (45 percent) specified that the selection of the mediator, arbitrator, or fact finder is to be made through the state's labor relations board. Another 114 (36 percent) of these procedures mention the American Arbitration Association as the outside agency.*

Tracy (1969) noted some similarities and differences between grievance arbitration in the private and the public sectors of the economy. Today's superintendent who is indignant at his teacher's insistence on being paid for overtime is similar to the emotional employer back in the 1930s who stood aghast at "disloyalty" among employees who voted for a union and expected to be paid for previously uncompensated time. The two sectors are also similar in that each has experienced a period of adjustment in which both labor and management anguished over each other's changing attitudes. Many of the grievances in education have derived from this problem of adjusting to the early stages of collective bargaining. These grievances will probably decrease in number as the procedure becomes more settled over time.

The most conspicuous difference between the kinds of grievance arbitration practiced in the two sectors is that discharge and discipline cases are much more numerous in the private sector. Whereas close to one-third of the cases in private industry involve discharge or discipline, only one-sixth of those in the public sector deal with this problem. The reason, according to Tracy, is that civil service and other procedures incidental to government employment may give greater protection against arbitrary discharge by supervisors than in the private sector of the economy.

However, disputes involving wages and basic contract terms are apt to turn up more often in public than in private employment.

Another difference noted by Tracy is that, whereas employers in private industry often claim inability to pay union demands, in the public sector this assertion "takes a more compelling form" since money to satisfy union demands often must come from the state or the electorate, with whom the board may have little influence. Thus in the public

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*Tracy (1969) reported that during the fifteen months from January 1, 1968, through March 31, 1969, the AAA appointed 209 fact finders, mediators, or arbitrators in new contract disputes between public employees and their governing boards; 140 arbitrators or advisory arbitrators in grievance cases; and 68 election arbitrators in the resolution of such questions as which organization would have bargaining rights and whether employees wished to accept contract terms negotiated for them.

sector the plea "inability to pay" may not necessarily denote bargaining in bad faith by local boards of education, who may indeed have no power over the taxing authority.

A possible deterrent to the development of binding grievance arbitration is the concept of sovereignty, which holds that public employers may not delegate their discretionary authority and so may not agree to be bound by the award of a third-party arbitrator. Consequently, advisory arbitration, which might be more appropriately called grievance fact finding with recommendations, has been frequently accepted by public employers and employees at the state and local levels in jurisdictions where the enforcement of binding grievance arbitration clauses is in doubt (Nolte and Linn 1968).

Legislative Provisions for Grievances

Table 7 shows the extent to which the twenty-two state statutes on collective bargaining in education provide for the resolution of grievances.

Eight of the statutes do not mention the word "grievance." However, this does not necessarily mean that the concept of grievance administration is lacking in those statutes. Although the drafters of some of the statutes obviously avoided using "labor language," they were not so squeamish about including labor concepts. Despite these omissions of the word "grievance," the concept was being honored in one way or another in most of the eight statutes.

The Maryland statute does not mention grievance administration, yet is written in such a way as not to preclude its possibility in practice. The North Dakota, Oregon, Washington, and Wisconsin statutes likewise contain no reference to "grievance," but state that the school employee shall be protected in his right to present his views directly to the school board. Thus, grievance administration of a sort is available to all public school employees in these states.

The remaining fourteen statutes deal directly with the issue of grievance administration. The Alaska statute, one of the briefest of all, states that a "labor organization" is an "organization which deals with grievances, terms or conditions of employment. . .in connection with employees," thus describing public employee bargaining in terms of the labor language used in the private sector of the economy. Massachusetts law makes the services of the state board of conciliation and arbitration available to assist public employers in grievance conciliation.

On the issue whether arbitration should be binding, Maine permits it but only on the meaning or application of specific terms of the collective-bargaining agreement (called binding contract arbitration). New Hampshire permits binding arbitration of grievances, except those requiring appropriations of district funds. North Dakota law provides

Table 7

Statutory Provisions for Grievance Procedures
October 1, 1969

State	Is Grievance Procedure Mentioned?	Comments
Alaska	Yes	Labor organization deals with grievances and terms or conditions of employment in connection with employees.
California	No	Boards may, however, hold executive (closed) sessions to consider discharge action or dismissal, unless employee gives written request for public hearing.
Connecticut	Yes	Gives single employee or exclusive representative of all employees the right at any time to present any "grievance" to representatives of board of education.
Florida	No	
Maine	Yes	Parties may enter into binding arbitration agreement, but only on meaning or application of specific terms of the collective-bargaining agreement (binding contract arbitration).
Maryland	No	However, statute does not preclude mutually agreed-upon grievance procedures between parties.
Massachusetts	Yes	State board of conciliation and arbitration is available for grievance conciliation; illegal labor practice for employer to refuse to discuss grievances with an exclusive representative in an appropriate unit.
Michigan	Yes	Duty of labor mediation board to mediate grievances; individual may present grievance without intervention of bargaining representative if not inconsistent with terms of the written agreement.
Minnesota	Yes	Right of teacher to express a view, grievance, complaint, or opinion may not be limited; grievance procedure required.
Nebraska	Yes	Public employer authorized to bargain in settlement of grievances; jurisdiction with Court of Industrial Relations.
Nevada	Yes	Nonmembers of majority organization not precluded from requesting adjustment of grievances; appeals by employee organization may be made to local government employee-management relations board.

Table 7--Continued

State	Is Grievance Procedure Mentioned?	Comments
New Hampshire	Yes	Binding arbitration of grievances, except those requiring appropriation of funds, is provided.
New Jersey	Yes	Division of Public Employment Relations has jurisdiction over grievance procedures; New Jersey Public Employment Relations Commission makes policy and establishes rules and regulations in grievance procedure.
New York	Yes	Public employers are empowered to recognize employee organizations for bargaining collectively in the determination and administration of grievances arising under terms and conditions of employment.
North Dakota	No	However, any teacher or administrator shall have right to present his views directly to the school board; boards and teachers may enter into binding arbitration agreements.
Oregon	No	Certificated personnel may be represented individually; consultants used where organization presents a grievance.
Rhode Island	No	Arbitration is binding on all matters not involving expenditure of money; grievances not mentioned but may be covered also.
South Dakota	Yes	Strikes prohibited, but right of public employee to express or communicate view, grievance, complaint, or opinion is protected, so long as the same does not interfere with full, faithful, and proper performance of his duties of employment.
Texas	Yes	Public employees may present grievances through representative who does not claim right to strike.
Vermont	Yes	Individual employee's right to be heard is protected; school board must process grievance upon request.
Washington	No	Right of certificated employee to appear before board in his own behalf is protected.
Wisconsin	No	However, any organization or individual is a proper party to proceedings to prevent a prohibited or unfair labor practice under the law.
Summary	Yes-14 No - 8	

that boards and teachers organizations may enter into binding arbitration by mutual agreement. Although "grievances" as such are not mentioned in the Rhode Island law, arbitration is binding on all matters not involving the expenditure of money. Finally, the South Dakota statute protects the right of a public employee to present a grievance, so long as the same does not interfere with the performance of his duties.

In conclusion, grievance administration is either expressly stated or strongly implied by the language of the twenty-two statutes. Even in the states having no enabling legislation on the subject, current bargaining agreements between teachers groups and boards of education in those states reveal wide use of grievance machinery in some form or another.

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Conclusions and Predictions

The most important development in school personnel management during this century is the adaptation of the labor-management framework to public employment in general and to school personnel administration in particular. Whereas some innovations in school management blossom only for a short time and then die out, collective bargaining can be expected to remain a permanent fixture in school personnel administration.

The present interest in collective bargaining for public school teachers began in New York City in 1961 when the United Federation of Teachers won the right to represent that city's teachers in bargaining with the board of education.

Throughout the 1960s, a number of factors converged to create a climate favorable to the rapid and widespread adoption of collective bargaining in education. These factors include teacher militancy and the rising expectations of the teaching corps, lower compensation generally in the public than in the private sector, the rapidly increasing numbers of public employees from 7 million in 1956 to nearly 12 million in 1969, the increasing importance of the educational enterprise in the economy, President John F. Kennedy's Presidential Order No. 10988, the ready availability of the labor-management framework to public employees,

the idea that the right to bargain might be constitutionally based, the waning power of local boards of education, the magnitude of certain problems plaguing the schools (e.g., separation of church and state, and desegregation), and the rivalry between the NEA and the AFT.

By the end of 1969, more than half (58.7 percent) of all certificated instructional personnel in the United States were involved in bargaining with their boards of education, despite the fact that less than half of the states (twenty-two) had enabling legislation.

A cultural bias against worker organizations restrained bargaining in the private sector during the first part of this century, and to some extent restrains the full realization of bargaining rights for public employees today. However, this picture is rapidly changing. By the end of the 1970s, considerable progress will have been made toward the realization of these rights for public school teachers.

Public employees are becoming highly organized, and, like teachers, are seeking audiences with their governing boards. By 1975, workers in public service are expected to number 15 million.

Conclusions

State legislation

No state among the twenty-two having legislation to permit or mandate collective bargaining in education had what could be called an ideal bargaining law in 1969. The laws vary widely in their contents, purposes, emphases, procedures, prohibitions, and guarantees. Whereas some statutes are sketchy and leave much to the imagination, others are punitive and prohibitory, levying heavy penalties on illegal strikes. Although numerous statutes rejected the terminology of the labor-management framework, they adopted many of its advantageous practices.

Of the twenty-two statutes, half covered all public employees and the other half applied to certificated public school personnel below the rank of superintendent only. No prediction of the possible trend in the 1970s can be made, though logic would dictate that a single law would be more economical than one for each group of public employees (e.g., teachers, policemen, and firemen).

No state has so far legalized the strike for its public employees, though Montana is cautiously experimenting with this right for its public health nurses, under limited conditions.

Little relationship seems to exist between a state's having a statute on collective bargaining for teachers and its proportion of teachers who were actually bargaining in 1969. Many states--e.g., Colorado, with 82 percent of its teachers bargaining--had no legislation on the subject but were deeply involved in bargaining under common law principles. However, among states having legislation, those with the oldest laws tended to be more fully occupied in bargaining than those with the most recent laws.

Seven Southern states had experienced little bargaining by 1970, and to that extent geography was a factor. However, several Northern states had less than 25 percent of their certificated personnel bargaining.

One inescapable conclusion regarding state legislation is this: A single statute to permit or mandate bargaining between teachers and school boards in a state will not be sufficient in the long run to effect all the deep-seated changes that bargaining requires. For example, the local board may not be able to meet employee demands because it obtains part of its budget from the state legislature. Who, then, is the employer--the local board or the state legislature? Other laws, perhaps to complement the bargaining law and to broaden its impact, may be necessary in the long run to implement the changes needed. Therefore, one should not expect too much from the initial round of bargaining laws, let alone expect them to be the final legislation on this problem.

Name of the game

"It's a whole new ball game" is an expression often heard in administrative circles, but just what the new rules may be is still puzzling. The name of the new game is not cooperation, but neither is it capitulation, logical persuasion, nor an exercise in raw power. Rather, it is <u>understanding</u>. To the extent that better communications can contribute to this goal, and so long as due process rules obtain, the process of collective bargaining between teachers and school boards will succeed.

Collective bargaining is a process of endless dialogue: If the dialogue stops, the machinery should operate to get it started again. Only in this way, with the aid of constitutional guarantees based on democratic principles, will the process justify the faith its backers claim for it as a means of settling disputes in education.

Scope of bargaining

Throughout the country, in states having or not having bargaining legislation, the scope of bargaining is broad rather than narrow. The phrase "wages, hours and conditions of employment," liberally construed, tends to be the standard throughout the land with respect to the scope of bargaining between teachers groups and boards of education.

Separate bargaining units

The trend is to allow different and separate bargaining units for administrators and teachers, though six of the statutes do not mention this matter. The state administrative agency or commission seems the logical body to determine the appropriateness of the bargaining unit.

Third-party intervention

Self-help and local resolution of impasses seem weak alongside state statutes that provide for a speedy, economical, and decisive settlement of impasses through third-party intervention by the state itself. The "tripartite" method in which three persons mediate, fact-find, or arbitrate is most commonly used to settle disputes between teachers groups and boards of education

Whereas in the past teachers have tended to gain early victories in the form of concessions from boards of education, this practice may be slowly coming to a halt. Boards are coming to the bargaining table with better advice, better organization, and generally better understanding of their roles. Most are now insisting on "something for something" in their bargaining with teachers groups.

Punitive laws

In 1969, New York's Taylor Act, already punitive in nature, was amended to include even heavier penalties on the teachers organization, its officers, and teachers who engage in work stoppages. Such laws have not prevented strikes by public school teachers. Some other methods must be attempted to reduce the power of teachers groups to disrupt and even close some schools.

The law is now well settled on the right of teachers to join or not to join organizations of their own choosing, to work openly in these organizations without fear of reprisals, and to enter into written agreements with boards of education on their employment problems. However, the legality of these written agreements is questionable, since boards traditionally have been unable to bargain away their right to have final determination on matters affecting education in their territorial limits. One issue in the 1970s, therefore, will be that of determining the legal status of the written agreement.

Grievance administration

Although grievance administration is widely practiced throughout the country, it is not found as a guarantee in many of the statutes on teacher bargaining. Only fourteen of the twenty-two statutes mentioned grievance administration.

Predictions for the 1970s

The following predictions for the field of school personnel administration in the next decade seem justified:

Teacher supply and demand

The U.S. Bureau of Labor Statistics reported that job openings for elementary and secondary school teachers will level off at about 2.4 million between 1968 and 1980, while the output of trained teachers during that same period will reach 4.2 million, an oversupply of 75 percent.

Legislation

Despite this anticipated oversupply of teachers, virtually all of them will be working under written bargaining agreements with their school boards (or with state legislatures, or with both). Every state will enact a statute outlining the parameters of collective bargaining for its public employees and/or teachers. Possibly, Congress will pass an act similar to the Wagner Act of 1935 mandating government to bargain with its public employees.

Numbers of public employees

By 1975, the number of public employees will exceed 15 million, compared with 10 million in 1965 and an estimated 12 million in 1969.

Organizations of workers

Public workers will continue to organize and to seek audiences with governmental control bodies. The AFT and the NEA will perhaps merge, allowing teachers to speak with one voice throughout the country. The resulting organization would be the largest worker organization in the country if not the world. It could well be the most influential organization in the nation.

Bargaining

Bargaining between teachers and boards of education will be on a very broad and comprehensive scale, involving practically every aspect of the educational enterprise. The profession will make an earnest effort to police its own ranks and to guarantee a certain standard of professional performance in the classroom in exchange for a larger share of the nation's goods and for a voice in the decision-making process.

Strikes

During the first half of the decade, school districts will experience an increasing number of work stoppages by their teachers, but these will

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tend to diminish during the latter half of the decade. Some states will experiment cautiously with the legitimization of the right of public employees to strike, but this right will be limited to conditions in which the public health and welfare are not threatened. Mediation, fact finding, and arbitration will be furnished by the government out of public funds and will tend in most states to be binding on the parties involved (at least arbitration will be binding).

Costs

Teachers will continue to gain more of the school dollar in salaries and fringe benefits, but they will have to give up more, perhaps even the single salary schedule, to gain these rewards. Federal and state funds will become more significant than local funds in supporting the schools, and distribution in the form of general rather than categorical aids will be attempted.

Salaries

Teachers' salaries will be based more on definite performance criteria than at present. The number of paraprofessionals will match or may even surpass the number of certificated personnel. Paraprofessionals will work under state laws delineating their legal status, will organize, and will bargain alongside or in the same bargaining units with certificated personnel.

School year

Schools will customarily operate twelve months out of the year. More midcareer training will be extended to school staffs, and teachers will negotiate terms under which they will engage in such training. Under the year-round school concept, teachers will become more involved than at present in experimentation to discover new ways to solve educational problems in the school district. Differentiated staffs will be composed of both certificated and noncertificated teams.

Technology

Innovative technological tools and learning devices, some self-instructional in nature, will become commonplace in the 1970s, thereby changing the teacher's role in the learning process. One expected outcome of the influence of such technology will be the tendency to negotiate curricular content and teaching methodology. Packaged hardware-software curricular materials will be more widely used, and, in some instances, private firms will contract with school officials to produce certain measurable outputs for so many dollars.

Special skills in school administration

Finally, to say that the role of the school administrator will change in the 1970s is an understatement: It will be transformed, as will the programs of graduate schools that produce candidates for administrative positions. School boards will pay premiums to administrators adept in the following specialties: public relations, personnel administration, and collective bargaining. Specialists in these areas will receive, as they justifiably should, increased prestige and respect from both teachers and boards of education throughout the land.

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